Modernising the Adult Guardianship Law for the 21st Century : What is the Role of Families, Civil Society and the State?

著者	Suga Fumie
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Modernising the Adult Guardianship Law for the 21st Century

—What is the Role of Families, Civil Society and the State?—

Fumie SUGA

《Abstract》

In order to truly modernise the adult guardianship law, we must break away from past practice, where the preservation of familial assets and the control of family members were paramount, and reject the idea of families as closed communities that are isolated from society as a whole. In a broader society, which integrates "family communities" into the greater family of society—a true "civil society"—willing people should be allowed and welcomed to give support to the vulnerable members of that society. One example of such a society would be the one pursued under the Mental Capacity Act 2005 in the UK. Under the framework of this Act, a person with insufficient capacity can receive assistance in his/her own decision-making from anybody around him or her. They might be a person appointed by the Court (a deputy), a person chosen in advance by himself/herself (an attorney), health care staffs, social care staffs and others whom he/she might come across when he/she needs help, or family members or close friends who might have been engaged in his/her care for a time.

In this way, family members can continue to participate in a social network of "empowerment" and "best interests", if they wish to and meet the required criteria. In fact, family members might have the most knowledge about the person's present and past wishes because they have the advantage of having been close to him/her. However, this does not

always mean that family members should have exclusive power or status over their weakened family members. In this paper, I will explore the issue of how we should arrange society in order to empower a person—regardless of whether or not he/she has close family members—who is not in a position to protect his/her interests by reason of an impairment or an insufficiency with respect to his/her personal faculties.

1. Introduction

In this paper, I would like to discuss ways to modernise the adult guardianship law to make it suitable for the 21st century, not for the 20th, without going back to the 19th century. In order to carry out this task, I will focus on the inter-play of families, the civil society and the state in the adult guardianship system of law.

The term or equivalent concept of "adult guardianship" has been historically used all over the world, where some people, who despite having reached the age of majority (legal adulthood), are allegedly not able to make reasonable decisions on their own because of mental disability, are legally declared "incapable." After this declaration (by a court, tribunal or some other public authorities), people known as "guardians" take over the rights to make their decisions instead of them.

However, in the 21st century, where the importance of human rights can never be overemphasised, and also, owing to the UN Convention[1)], the rights of persons with disabilities are highly recognised; the term or concept of "adult guardianship" is expected to take on a different meaning,

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that is: supporting people to make decisions by themselves[2]. This means that people with mental disability do not have to manage everything on their own, nor will their decisions be replaced by those of others (i.e. guardians), but they will be empowered to make their own decisions with appropriate help in each specific situation. This is a revolutionary idea of "guardianship" for adults.Under this new idea, there will no longer be "guardians", in the narrowest sense of the word to "guard", any more, instead, there will be "supporters" who will be trained by society to

1) The UN convention on the rights of persons with disabilities (CRPD), which was adopted by the UN General Assembly on 13th December 2006, is now signed by about 155 states and ratified by about 127 states. The purpose of the Convention is 'to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity' (Article 1).

2) Article 12 of the UN Convention provides equal recognition before the law. Particularly, subsection (3) requires states parties to "take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity", and also subsection (4) requires States Parties to "ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law".

With regard to the interpretation of Article 12, the concluding observations by the UN CRPD Committee on one of states parties would give us an overview, which show the Committee's concern and recommendation. Those are: "The Committee is further concerned that no measures have been taken to replace substitute decision-making by supported decision-making in the exercise of legal capacity" (recommendation for Spain at paragraph 33), and "The Committee recommends that the state party review the laws allowing for guardianship and trusteeship, and take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person's autonomy, will and preferences" (at paragraph 34). Furthermore, "The Committee however remains concerned about the possibility of maintaining a modified regime of substitute decision-making in the drafting of the new Civil Code. The Committee is also concerned that the process of drafting of the new Civil Code has not been used to provide for a detailed and viable framework for supported decision-making in the exercise of legal capacity in accordance with the provisions of article 12 of the Convention." (recommendation for Hungary at paragraph 25)

From these, it seems at least certain that regimes of supported decision-making are more preferable, not to say that all substitute decision-making arrangements should be eliminated. It seems also true that, in reality, there are many cases where supported decision-making is no longer feasible and some form of substitute decision-making, as long as it is restrained in the minimum intervention, is unavoidable.

empower the person, being supported, to make their own decisions.

Furthermore, it is now widely believed that the right to self-decision (autonomy) should be respected in any situation, and more carefully throughout society, even between family members. In this new culture, families are not automatically to be regarded as advocates for other family members simply due to their relation by birth or marriage. Family members must be chosen by the person in need formally (eg. through the (enduring / lasting) powers of attorney), or must apply to the courts for the legal authority to act as deputies for the person lacking capacity (eg. a guardianship order). It is now becoming clear that conferring special status upon families by law is not always best for the human rights of people with limited mental capacity. This can be said, not only in cases where a conflict of interests is obvious, but also in any case where a decision will affect not only the person but also their family, financially or otherwise. In such cases,the wishes of the person (who is in a position of weakness) and those of other family members (who are in a position of strength) are often too intertwined for the former to make the best choices for the latter.

It might be said that, under contemporary adult guardianship law, families are beginning to be considered more as only one aspect of a broader supportive network in society, that is, civil society. In this paper I will reconsider the role of families, and explore their interrelationships with civil society and the state in the contemporary adult "guardianship" system. For this purpose, I will refer to the Japanese and the English systems for comparison.

Here, I would like to show four perspectives which I believe will be helpful for analysing the themes mentioned so far. They are in regards to the person him/herself with limited mental capacity, his/her families, society, and the state respectively.

(a) Are the persons with limited mental capacity included actively in law and society? Are their rights to decision-making secured in law?

(b) Are families released from the primary responsibilities in law and also in society?

(c) Do we truly live in a "civil society" where people contribute to the welfare of all the other members of the society?

(d) Is the state prepared to take fundamental responsibility for enhancing the system?

Throughout this paper, I will try to provide possible answers to the above questions.

2. Should we pursue substituted decision-making or supported decision-making?

Generally speaking, in Japanese adult guardianship law, the focus is on the welfare of a person who has very limited mental capacity. In practice, in order to give protection to the person in question, another person takes over his/her decision-making in legally important situations such as carrying out transactions (eg. purchase, lease) and making contracts to enter into care homes etc. Basically, in Japanese adult guardianship law provided by the Japanese Civil Code, "guardians" are considered to be legal representatives who are authorised to make substitute decisions on behalf of the person. For example, the article 859 of the Japanese Civil Code prescribes: "A guardian shall administer the property of a ward and represent a ward in juristic acts concerning his/her property". This can be called the "substitute decision-making" approach, which is still dominant in many jurisdictions all over the world.

On the other hand, in English Adult guardianship law (the Mental

Capacity Act 2005), the focus is placed on avoiding "substitute decision-making". Rather, intervention is considered to be used only in specific cases where the person cannot make decisions even with help from others. Section 1 (2) of the Mental Capacity Act 2005 prescribes: "A person must be assumed to have capacity unless it is established that he lacks capacity", and Section 1 (3) prescribes: "A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success." These attitudes of the law are exemplified by forms of scenario in the Code of Practice of the Mental Capacity Act 2005[3].

For "exceptional" cases where the person concerned is assessed, according to Section 1 (2) and (3) shown above, as not being able to make their own decisions by any means, there are two more principles prepared for when "substitute decision-makers" are required.Section 1 (5) stipulates that: "an act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests". In the following, Section 1 (6) provides: "before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action". From these principles, it can be said that the English approach of "supported decision-making" stresses the minimum intervention founded on the maximum support.

Furthermore,it should be noticed that even in such cases where "substitute decision-making" is necessary, the concept of empowerment still prevails[4]. Here, the term "empowerment" means that persons

3) The Code of Practice, which was produced by the Lord Chancellor according to section 42 of the Mental Capacity Act 2005, provides guidance and information about how the Act should work in practice, and supports the legal framework provided by the Act. For this purpose, the Code of Practice presents various hypothetical scenarios and their solutions.

concerned are supposed to be encouraged to express their own wishes, feelings, likes/dislikes, values and beliefs. "Decision-makers" are then expected to try to find any small indication of their wishes in any ways they can, for example, through their facial expression and behaviours, and reflect them in the decisions to be made. With regard to this task, the Mental Capacity Act 2005 sets out "the checklists"to identify what decision is in "the best interests" of the person. I will explore this idea in the next section.

Comparatively, in Japanese adult guardianship law, as already mentioned, the general rule is that people are assumed to have lost their mental capacity if they have been placed under the guardianship order[5]. As the result of this, juristic acts which had already been made by the person himself can be claimed to be invalid by his guardians[6].

To sum up, persons with limited mental capacity are, in English Law, assumed to have some mental capacity, however limited it may be, and so they should continue receiving the maximum support for their own decision-making. They will have substitute decision-makers only as the last resort. In contrast, persons with limited mental capacity are, in Japanese law, deliberately divided into one of the three categories (guardianship,

4) Lord Falconer clarified that the aim of the Mental Capacity Act 2005 was to give "as much empowerment as possible and proper protection for adults who cannot take all decisions for themselves" (Hansard (House of Lords) January 10 2005, 668, colum 12).

5) Article 7: "With respect to any person who constantly lacks the capacity to discern right and wrong due to mental disability, the family court may order the commencement of guardianship at the request of the person in question,his/her spouse, any relative within the fourth degree of kinship, the guardian of a minor, the supervisor of the guardian of a minor, the curator, the supervisor of the curator, the assistant, the supervisor of the assistant, or a public prosecutor."

6) Article 9: "A juristic act performed by an adult ward may be rescinded; provided,however, that, this shall not apply to any act relating to daily life, such as the purchase of daily household items."

curatorship or assistance), according to their cognitive ability as determined by medical practitioners: whether they are in a completely, mostly, or partly incapacitated situation[7]. A person placed in the first category (under the guardianship order) will be represented (ie. to have decision substituted) by guardians and will have no say in the decision-making process. Here it should be added that, persons with limited capacity are too easily put into the first category, even though they could be declared still to have mental capacity under English Law. In Japanese society, the entire focus is on whether or not he/she should be guarded and protected, even in the early stages of vulnerability (eg. in advanced and developing states of dementia, and Alzheimer's disease) in order to protect the individual before it is too late (ie. before he/she is tricked into contracts that are disadvantages to him/her). Furthermore, the other option of having supporters who might strengthen his/her decision-making capacity is not commonly known.

From this analysis, it can be said that, in Japanese law, persons with limited mental capacity become "excluded from society" once they have guardians appointed by the court; guardians have comprehensive powers to make contracts on behalf of them and revoke contracts into which their wards had willingly entered (except for contracts for daily consumption). It is ironic that, by allowing guardians to step into their daily lives and control their rights to decision-making, these persons end up suffering further because of the resulting "social exclusion". In addition, it should be noted

7) (α) under the "guardianship" order: the person is deprived of the "legal capacity" to enter into contracts and make decisions on any other financial affairs except for the purpose of daily consumption (they are also deprived of voting rights)
(β) under the "curatorship" order: the person is deprived of the "legal capacity" to enter into contracts and make decisions on the issues specified in the order
(γ) under the "assistance" order: the person is deprived of the "legal capacity" on the issues which he/she agreeds to and are specified in the order

that, although their legal capacity to get married and make wills is not affected, persons under guardianship orders lose the rights to vote.

3. Whose best interests are to be pursued?

In carrying out the tasks of making decision on behalf of a person who has been deemed incapacitated, Japanese guardians are legally required to respect the wishes of the person concerned.In Article 858 (Respect for Intention and Personal Consideration of Adult Ward), it is stipulated that "A guardian of an adult, in undertaking affairs related to the life, medical treatment and nursing, and administration of property of an adult ward, shall respect the intention of the adult ward, and consider his/her mental and physical condition and living circumstances."

Article 858 requires guardians to find a balance between the wishes of the person in need, on one hand, and the condition and circumstances which they are in on the other. However, there is no guidance for guardians to rely on[8], which leads guardians to apply their own common sense and beliefs. It is no surprise that guardians in Japanese law often suffer from stress when choosing between the desires of the person in their care, and their own views on what is best for the person.In this situation, it also seems to happen that, when guardians are the person's own family members, the wishes of the person and those of the family are tightly tied together[9]. It seems also possible,when guardians are professional people from outside of the family, they are sometimes overwhelmed by the wishes

8) There is only a guidance (a provision) to be applied in extreme cases, that is: the Article 846 (Replacement of Guardian) "If there is an unlawful act, grave misconduct, or other cause not be fitting the office of guardianship on the part of a guardian, the family court may replace the guardian on the application of a supervisor of a guardian, a ward or his/her relative, or a public prosecutor, or ex officio."

of the family members, because they cannot be certain as to how they can explore the wishes of the person by themselves. Without official guidance, they can be strongly affected by the wishes of the family, and as a result, some kind of compromise might be reached amongst them in the absence of the person to be affected by the decision.

With regard to this point, in English law, the court has developed a rule, which is known as the "balance sheet approach"[10]. The Mental Capacity Act 2005, for the first time, provides the statutory framework in this area and "the checklists" are stipulated in section 4 of the Act[11], which shows every substitute decision-maker[12] useful steps on how to identify the

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9) Some have found a positive aspect here such as an increase in psychological unity in families. See, Herring, J., *Older People in Law and Society* (OUP 2009), at 109-115. See, also, *Re Y* (*Mental Patient: Bone Marrow Donation*)[1997] Fam 110; [1997] 2 WLR 556; [1996] 2 FLR 787. This is a case on whether donating bone marrow to her elder sister without her consent could be in her best interests in that specific (family) situation.

10) *Re A (Male Sterlisation)* [2000] 1 FLR 549, at 560.Historically, the concept of "best interests" has been developed by the High Court in the context of making a declaration as to whether a proposed medical treatment to an incapacitated adult is lawful or not.

11) [4 Best interests]
(1) In determining for the purposes of this Act what is in a person's best interests, the person making the determination must not make it merely on the basis of—
(a) the person's age or appearance, or
(b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.
(2) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.
(3) He must consider—
(a) whether it is likely that the person will at some time have capacity in relation to the matter in question, and
(b) if it appears likely that he will, when that is likely to be.
(4) He must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.
(5) Where the determination relates to life-sustaining treatment he must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to bring about his death.
(6) He must consider, so far as is reasonably ascertainable—

person's "best interests". The Act intentionally does not define what is meant by "best interests" generally[13],but shows decision-makers how to find what can be legally accepted as "best interests" in a specific situation. It should also be noted that the Act does not say "the best interest" but rather says "best interests", which implies that there are more than one right answer.

On finding the best interests in a situation for the person, the Act requires the decision-maker to involve the person himself/herself. Section 4 (4) prescribes: "He must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate,

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(a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),

(b) the beliefs and values that would be likely to influence his decision if he had capacity, and

(c) the other factors that he would be likely to consider if he were able to do so.

(7) He must take into account, if it is practicable and appropriate to consult them, the views of—

(a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,

(b) anyone engaged in caring for the person or interested in his welfare,

(c) any donee of a lasting power of attorney granted by the person, and

(d) any deputy appointed for the person by the court,as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6).

(8) The duties imposed by subsections (1) to (7) also apply in relation to the exercise of any powers which—

(a) are exercisable under a lasting power of attorney, or

(b) are exercisable by a person under this Act where he reasonably believes that another person lacks capacity.

12) In the UK's Mental Capacity Act 2005, substitute decision-makers who should follow the procedures required by the Act and also pay regards to the Code of Practice are; attorneys, deputies, a variety of health care staffs, social care staffs, care assistants employed by care homes, care workers providing domiciliary care services, and family members who are engaged in the care of a person who lacks mental capacity to make the decision in question or to consent to the services proposed.

13) Whether there should be a clear definition of "best interest" was discussed in Parliament (Hansard (House of Commons) (21 October 2004), column 77). It was concluded that there should be no single definition, because each person's "best interests" will be unique according to his/her background and situation.

as fully as possible in any act done for him and any decision affecting him". Furthermore, Section 4 (6) prescribes: "He must consider, so far as is reasonably ascertainable—(a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),(b) the beliefs and values that would be likely to influence his decision if he had capacity, and (c) the other factors that he would be likely to consider if he were able to do so". From these provisions, it can be interpreted that, in English law, "best interests" are considered to be subjective in nature where the person himself can be the best judge rather than any other decision-makers.

4. The right places for families, civil society and the state

With regards to the "checklists" shown in the UK's Mental Capacity Act 2005, it should be also noticed that, in the following subsection, Section 4 (7) prescribes that "He must take into account, if it is practicable and appropriate to consult them,the views of—(a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,(b) anyone engaged in caring for the person or interested in his welfare,(c) any donee of a lasting power of attorney granted by the person, and (d) any deputy appointed for the person by the court,as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6) (mentioned above)." This is referred to as the "inclusive approach":which places the person himself/herself with limited mental capacity at the centre of the decision-making process and includes as many people as possible who are sincerely concerned about his/her welfare. As seen above, Section 4 (7) does not describe straightforwardly the status of families, which implies families are important but only one

part of "a web of support" which spreads out in realising "the best interests" of the person.

The English courts' attitude of not placing automatic preference on families is clarified in *G v E and Manchester City Council and F* [2010] EWHC 2512 (COP) (Fam). In this case where an elder sister of the incapacitated person applied for becoming one of "the personal welfare deputies jointly and severally" for him and also for becoming a financial affairs deputy for him, Mr Justice Baker clearly held that, "It is not part of the scheme underpinning the MCA 2005 that there should be one individual who is given special legal status to make decisions about an incapacitated person." He continued that "Family members should not be appointed deputies for personal welfare matters as a matter of course simply because they are willing and able to act as such".

This decision can be compared with, and actually rejects the previous decision in *Re P* [2010] EWHC 1592 (COP) where Mr Justice Hedly held that, "the court ought to start from the position that, where family members offer themselves as deputies, then, in the absence of family dispute or other evidence that raises queries as to their willingness or capacity to carry out those functions, the court ought to approach such an application with considerable openness and sympathy." What seems to lie at the heart of this decision is the Judge's view on the responsibility of families, which was shown in another part of the judgement: "it is not the State, whether through the agency of an authority or the court, which is primarily responsible for individuals who are subjects or citizens of the State. It is for those who naturally have their care and wellbeing at heart, that is to say, members of the family, where they are willing and able to do so, to take first place in the care and upbringing, not only of children, but of those whose needs, because of disability, extend far into adulthood."

In Japanese law, with regard to a person who has limited mental capacity, only the person him/herself,his/her spouse and relatives within the fourth degree of kinship, or people in official positions[14], may apply for guardianship (Article 7). Who should be appointed as a guardian is at the court's discretion (Article 843 (1)), but, in practice, as a matter of social norm, it seems that family guardians are preferred over professional guardians. There is a new type of guardians called "citizen guardians" who work, as members who belong to the same local community, on a voluntary-basis (without or with moderate remuneration), but they are considered to be as the last resort. It can be said that, in Japanese law and society, preference is given to family members and it is difficult for others outside of the family to step in.Needless to say, there is no room for the state to intervene, as long as the situation remains below the line of abuse.

To put it in another way, Japanese law and practice reflects the view of Mr Justice Hedly, in that members of families are morally responsible to be the primary carers of those of diminished capabilities, and society or the state have a duty to get involved only in cases where the family relationships are dysfunctional. This idea seems to be backed up by social security law[15] which provides the means-test,to make an assessment on whether he/she is eligible for social benefits, on a basis of kinship(whether there are any relatives within the third degree at maximum who can afford to support him/her financially)[16] rather than on a basis of an individual (whether he/she himself/herself has assets, property, or minimum income).

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14) They include: the guardian of a minor, the supervisor of the guardian of a minor, the curator, the supervisor of the curator, the assistant, the supervisor of the assistant, or a public prosecutor.

15) Article 4 (2) of the Public Assistance Act provides: "any support given by a person responsible for support prescribed by the Civil Code and any assistance prescribed by any other Act shall be provided in precedence to public assistance under this Act."

It would be difficult to think "individualistically" only in the area of the adult guardianship law, if legal frameworks in other areas are set up in "familial communitarianism". However, as long as we keep considering adult guardianship law from the perspective of families, the person in need cannot be placed at the centre of the issue, which is ironic because adult guardianship law was introduced to maximise the consideration given to the welfare of these individuals.

Conclusion---*How can we modernise it*?

In order to truly modernise the adult guardianship law, we must break away from past practice, where the preservation of familial assets and the control of family members were paramount,and reject the idea of families as closed communities that are isolated from society as a whole. In a broader society, which integrates "family communities" into the greater family of society—a true "civil society" willing people should be allowed and welcomed to give support to the vulnerable members of that society. One example of such a society would be the one pursued under the Mental Capacity Act 2005 in the UK. Under the framework of this Act a person with insufficient capacity can receive assistance in his/her own decision-making from anybody around him or her. They might be a person appointed by the Court (a deputy), a person chosen in advance by himself/herself (an attorney), health care staffs, social care staffs and others whom he/she might come across when he/she needs help, and family members or close

16) Article 877 (1) of the Civil Code prescribes: "Lineal relative by blood and siblings have a duty to support each other", and (2) : "If special circumstances exist, the family court may also impose a duty of support between relatives within the third degree, in addition to the case prescribed in the preceding paragraph."

friends who might have been engaged in his/her care for a time. In this way, family members can continue to participate in a social network of "empowerment" and "best interests", if they wish to and meet the required criteria. In fact family members might have the most knowledge about the person's present and past wishes, because they have the advantage of having been close to him/her. However, this does not always mean that family members should have exclusive power or status over their weakened family members.

Therefore, the next issue is how we should arrange society in order to empower a person, regardless of whether or not he/she has close family members-who is not in a position to protect his/her interests by reason of an impairment or an insufficiency with respect to his/her personal faculties (eg. learning disabilities, mental disabilities, dementia, Alzheimer's disease, brain injury…etc). The checklists and the Code of Practice provided by the Mental Capacity Act 2005 might be examples which can function as instructive guidance for every supporter and substitute decision-maker, including family members, to refer to. In Japan, various professional bodies of guardians are now trying to draft their own code of practice in order to find a way for better "guardianship".

At the same time, it is necessary that substitute decision-makers should be protected by law, as long as they are acting according to the purpose of the law. With regard to this, the Mental Capacity Act 2005 provides Section 4 (9): "In the case of an act done, or a decision made, by a person other than the court,there is sufficient compliance with this section if (having complied with the requirements of subsections (1) to (7)) he reasonably believes that what he does or decides is in the best interests of the person concerned." This provision gives legal protection to substitute decision-makers,as long as they are acting sincerely according to the

fundamental principles of the Act, which are "empowerment" and "best interests".

In addition to the existence of:(a) open and collaborative society, (b) broader society of mutual help, (c) deep understanding of what is expected in modern adult guardianship, and (d) the law which can facilitate willing and responsible supporters in their tasks, it is considered to be very important that: (e) the state and local authorities take the primary responsibility to back up these regimes.

With regards to the last point, in Japan, now there is new movement of training "citizen guardians" in many municipalities. Some of them, chosen as models of enthusiastic municipalities, receive financial support from the Ministry of Health and Labour.The next issue is whether the cost of guardianship for persons with limited assets and income should be covered by public resources. There have been ideas of "public guardianship" in many countries for persons in such situations. In most of these cases, local authorities themselves, civil servants who work for local authorities, or professionals working on a pro bono-basis are appointed as guardians. Whether the new Japanese "citizen guardians" can be developed successfully to play the role of guardians will depend on public awareness.

It can be concluded that, at least, when (b),(c),(d),(e) shown above are established, we might be able to feel that we have appropriate "social security" not only in the meaning of monetary services but also in the meaning of human services. Furthermore, if we also have (a), we can highly appreciate it.